Supreme Court, U. S.
FILED
JUL 5 1975
MICHAEL RODAK, JR., CLERK

No. 75-19

In the Supreme Court of the United States

OCTOBER TERM, 1975

UNITED STATES OF AMERICA, PETITIONER

v.

DOMINGA SANTANA and WILLIAM ALEJANDRO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ROBERT H. BORK,
Solicitor General,

JOHN C. KEENEY,
Acting Assistant Attorney General,

FRANK H. EASTERBROOK,
Assistant to the Solicitor General,

JEROME M. FEIT,
TERENCE M. BROWN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Constitutional provision involved	2
Statement	2
Reasons for granting the writ	6
Conclusion	12
Appendix A	1a
Appendix B	7a
Appendix C	8a

CITATIONS

Cases:

Carroll v. *United States*, 267 U.S. 132	7
Commonwealth v. *Bosurgi*, 411 Pa. 56, 190 A.2d 304, certiorari denied, 375 U.S. 910	7
Commonwealth v. *Smith*, 225 Pa. Super. 509, 311 A.2d 716	7
Coolidge v. *New Hampshire*, 403 U.S. 443	8, 10, 12
Cooper v. *California*, 386 U.S. 58	11
Dorman v. *United States*, 435 F.2d 385	12
Gerstein v. *Pugh*, 420 U.S. 103	7, 8-9
Gil v. *Beto*, 440 F.2d 666	8
McDonald v. *United States*, 335 U.S. 451	9

Cases—Continued — Page

Ponce v. *Craven*, 409 F.2d 621, certiorari denied *sub nom. Ponce* v. *California*, 397 U.S. 1012 — 8
United States v. *Bazinet*, 462 F.2d 982, certiorari denied *sub nom. Knox* v. *United States*, 409 U.S. 1010 — 12
United States v. *Davis*, 461 F.2d 1026 — 7
United States v. *Edwards*, 415 U.S. 800 — 11
United States v. *Holland*, 511 F.2d 38 — 10
United States v. *Honore*, 450 F.2d 31, certiorari denied, 404 U.S. 1048 — 8
United States v. *Lindsay*, 506 F.2d 166 — 10
United States v. *Miles*, 468 F.2d 482 — 7
United States v. *Morris*, 477 F.2d 657, certiorari denied, 414 U.S. 852 — 12
United States v. *Scott*, C.A. 9, No. 74-1373, decided February 21, 1975 — 10
United States v. *Watson*, certiorari granted, 420 U.S. 924 — 7, 12
Warden v. *Hayden*, 387 U.S. 294 — 8, 9

Constitution and statute:

United States Constitution, Fourth Amendment — 2, 9, 10
21 U.S.C. 841 — 5

In the Supreme Court of the United States

OCTOBER TERM, 1975

No.

UNITED STATES OF AMERICA, PETITIONER

v.

DOMINGA SANTANA and WILLIAM ALEJANDRO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINION BELOW

The court of appeals rendered no opinion. The oral opinion of the district court (App. A, *infra*, pp. 1a-6a) is unreported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, p. 7a) was entered on March 21, 1975, and

the government's timely petition for rehearing and suggestion of rehearing *en banc* was denied on May 8, 1975 (App. C, *infra*, p. 8a). On May 30, 1975, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including July 7, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether an arrest warrant is required in order to make an arrest, on probable cause, of a person standing in plain view in the doorway of her residence.

2. If not, whether the police may effect a warrantless arrest if the suspect retreats into her residence after the police advise her of their authority and purpose.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

1. On August 16, 1974, Michael Gilletti, an undercover officer with the Philadelphia Narcotics Squad,

told Patricia McCafferty (from whom he had purchased narcotics before) that he wanted to purchase a "bundle" of heroin (Tr. 11-12, 22-23).[1] McCafferty, not knowing that Gilletti was a law enforcement officer, agreed; she told Gilletti that the bundle would cost "$115 and we will go down to Mom Santana's for the dope" (Tr. 12).

Gilletti, who intended to arrest McCafferty if she sold him the drugs, informed his immediate supervisor of the proposed transaction, arranged for surveillance, and recorded the serial numbers on the bills to be used (Tr. 13, 29-30). After he met McCafferty, she directed him to drive to Fifth and Dauphin Streets. Upon arrival, Gilletti gave her $110. McCafferty approached the residence at 2311 North Fifth Street. She had a brief discussion with respondent Alejandro, who was sitting on the steps, then she entered the row house. Approximately five minutes later, McCafferty returned to Gilletti's car. Gilletti drove about a block and a half; he stopped and McCafferty produced the heroin. Gilletti gave a pre-arranged signal to the surveillance officers and arrested McCafferty (Tr. 13-15, 67, 86). After being given *Miranda* warnings, McCafferty told Gilletti that "Mom Santana has the money" (Tr. 15).

Three of the surveillance officers immediately returned to the row house at 2311 North Fifth Street. As they drew up in front of respondent Santana's

---

[1] "Tr." refers to the transcript of the suppression hearing on November 12 and 13, 1974.

residence, they saw her[2] standing in the doorway with a brown paper bag in her hand. The officers testified that they got out of the car with their guns drawn and their identification cards and badges displayed, and that they announced "Police" (Tr. 68, 74-75, 80, 84, 102).[3] Santana retreated into the vestibule and was followed by the officers. One of the officers caught Santana's hand as she attempted to leave the vestibule for one of the interior rooms. A struggle ensued during which two "glazed paper packets [containing] a white powder fell to the floor" (Tr. 68). Respondent Alejandro picked up the packets and attempted to flee, but he was subdued by another officer (Tr. 68, 80, 102-103).

Following the brief scuffle, respondents were searched. The bag that Santana was holding contained "15 bundles of white powder in glazed paper packets" (Tr. 69). Santana had $135 on her person, $70 of which was identified as money that Gilletti had given to McCafferty for the heroin and that McCafferty claimed to have given to Santana (Tr. 81-82, 90-91).

2. An indictment filed in the United States District Court for the Eastern District of Pennsylvania

---

[2] Officer Strohm testified that he recognized Santana, whom he had seen before (Tr. 74).

[3] Santana's daughter and daughter-in-law testified that the officers did not identify themselves as police and that it appeared to be a robbery, although neither attempted to call the police (Tr. 108, 112-114, 116-118). The district court did not resolve this conflict.

charged McCafferty with distribution of heroin, in violation of 21 U.S.C. 841, and Santana and Alejandro with possession of heroin with intent to distribute, in violation of the same section. McCafferty pleaded guilty. Santana and Alejandro moved to suppress the heroin and money found during and after their arrests.

The district court read its opinion from the bench on November 13, 1974 (App. A, *infra*). The court concluded that "[t]here was strong probable cause [to believe] that [respondent] Santana had participated in the transaction with Defendant McCafferty" (App. A, *infra*, p. 3a). The court nevertheless suppressed the evidence. The court apparently concluded that the arrest was unconstitutional because made without a warrant; after recounting that an officer had testified that he went to the house to arrest respondent Santana, the court stated that this would "require a warrant, * * * a warrant of arrest under ordinary circumstances * * *" (*ibid*). The court also concluded that "[t]here is no evidence that either [respondent] was armed which is an important consideration in considering whether or not a warrantless arrest or search can be undertaken" (*ibid.*), and that because the money was found in respondent Santana's pocket, there "was no basis to conclude that it was to be destroyed" (*id.* at 4a).

The district court then rejected the government's argument that Santana's arrest could be considered part of the "hot pursuit" immediately after a crime:

the court restricted this justification to "a usual kind of a chase in and about public streets or places or even in and about a building" (*id.* at 4a-5a). Because there was no "chase" in this case, the district court declined to uphold the arrest.

The United States appealed. The court of appeals affirmed without opinion (App. B, *infra*, p. 7a).

REASONS FOR GRANTING THE WRIT

The district court held that the arrest was defective because made without a warrant. If Santana was unlawfully arrested, the items seized incident to her arrest are inadmissible in a prosecution against her.[4] We do not know the reasons for the Third Circuit's summary affirmance, but we can perceive only two possible grounds. On one hand, the court of appeals might have concluded that all arrests require warrants in the absence of circumstances more "exigent" than "the extreme emergency posture of a case like this" (App. A, *infra*, p. 5a). On the other, the court might have believed that, although probable cause usually is sufficient to support a felony arrest, a warrant was required here because the arrest ultimately took place in the vestibule of respondent Santana's home. Both of these alterna-

[4] It is unclear what grounds, if any, provide respondent Alejandro with standing to challenge the seizure of the heroin and money. However, the government did not contend below that Alejandro lacks standing, and, accordingly, we have not presented it as a question for resolution by this Court.

tive grounds present important issues concerning the proper administration of criminal justice.

1. If the court's affirmance rested upon the proposition that warrants ordinarily are required to support a felony arrest on probable cause, this case presents an issue similar to that now before the Court in *United States* v. *Watson*, certiorari granted, 420 U.S. 924.[5] We have argued in *Watson* that probable cause is constitutionally sufficient to support a felony arrest in a public place, and that a warrant is not required even if there is time to obtain one. See also *Carroll* v. *United States*, 267 U.S. 132, 156-157; *Gerstein* v. *Pugh*, 420 U.S. 103, 111-116. In both *Watson* and this case the officers were in a public place, where they had every right to be, when they observed the individual whom they had probable cause to arrest. Respondent Santana, by standing in her doorway, had exposed herself to public view and could have had no reasonable expectation that the officers, seeing her there, would fail to approach her.[6] Cf. *Ponce* v. *Craven*, 409 F.2d 621,

[5] We are furnishing to counsel for respondents copies of our brief in *Watson*.

[6] The Third Circuit has been inconsistent in its treatment of contentions that an arrest warrant usually is necessary. Compare *United States* v. *Davis*, 461 F.2d 1026, with *United States* v. *Miles*, 468 F.2d 482. Because the arrest in this case was made by Pennsylvania officers, they would be bound by any more stringent state requirements. Pennsylvania law, however, permits warrantless arrests if the arrest is supported by probable cause. See *Commonwealth* v. *Bosurgi*, 411 Pa. 56, 190 A.2d 304, certiorari denied, 375 U.S. 910; *Commonwealth* v. *Smith*, 225 Pa. Super. 509, 311 A.2d 716.

624 (C.A. 9), certiorari denied *sub nom. Ponce* v. *California*, 397 U.S. 1012; *Gil* v. *Beto*, 440 F.2d 666 (C.A. 5); *United States* v. *Honore*, 450 F.2d 31 (C.A. 9), certiorari denied, 404 U.S. 1048. If we prevail in *Watson*, the propriety of respondent Santana's arrest (excluding problems caused by her retreat into the vestibule) follows directly. Indeed, the conduct of the police with respect to respondent Santana was, if anything, even more reasonable than the conduct of the Postal Inspector with respect to Watson. Although there was an opportunity to obtain a warrant for Watson's arrest, there was no comparable opportunity here unless the officers were willing to tolerate the considerable risk that Santana or Alejandro would learn of McCafferty's arrest and, upon so learning, flee or destroy the evidence in their possession. So, too, the officers knew that Santana was committing the continuing offense of possession of heroin with intent to distribute; an immediate arrest would terminate the offense as it was being committed. Both of these arguments, although they distinguish this case from *Watson*, augment rather than undermine the justification for Santana's arrest.

2. This case also presents an interesting and important variant of the situations in *Coolidge* v. *New Hampshire*, 403 U.S. 443, and *Warden* v. *Hayden*, 387 U.S. 294. In *Coolidge* the Court divided over the question whether an arrest or search warrant is necessary in order to invade a private place for the purpose of making an arrest; no view obtained a majority. As the Court recently stated in *Gerstein*,

supra (420 U.S. at 113, n. 13), "[t]he issue of warrantless arrest that has generated the most controversy, and which remains unsettled, is whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest." In *Hayden* the Court held that a warrantless entry of a private residence to search for a suspect was constitutionally permissible where "'the exigencies of the situation made that course imperative'" (387 U.S. at 298, quoting from *McDonald* v. *United States*, 335 U.S. 451, 456).

The issue presented here is whether the *Hayden* "hot pursuit" justification, in light of the dispute reflected in the several opinions in *Coolidge*, permitted the officers to pursue respondent Santana from her doorway into her vestibule, and to arrest her, without a warrant, inside her home. This is a question of considerable importance; in many cases officers with probable cause to arrest an individual will see the individual in plain view, only to have him retreat into a "private place" that an officer ordinarily could not enter without consent of the occupants or a warrant. We do not think that the Fourth Amendment contemplates that a retreat such as here took place will provide the suspect with "sanctuary" and freedom from arrest.

In *Hayden* the officers knew that a robbery had taken place. Some hours later they learned that a man of the robber's description had entered a private residence. They promptly entered the residence to search for him; the Court held that to require the

officers to have obtained a warrant would have jeopardized the investigation because the opportunity to apprehend the suspect might be fleeting. A similar analysis applies to cases of the present sort.[7] The officers returned to Santana's residence only minutes after the commission of the crime and saw her in her doorway. They were entitled to approach her for the purpose of arresting her. But once they had announced their identity and purpose and Santana had retreated, it would have jeopardized the investigation to desist and seek a warrant. Santana could have destroyed the evidence she was known to possess and as easily could have destroyed any contraband in the house. Moreover, unless a cordon of policemen had placed her under "house arrest" while a warrant was being obtained, both respondents could have fled. There is no reason why the policies underlying the Fourth Amendment would favor "house arrest" rather than personal apprehension in the circumstances of this case.

The privacy interests identified by the plurality opinion in *Coolidge* do not condemn as "unreasonable" the official action in this case.[8] The officers had personally observed the suspect; concerns about intrusions into private spaces upon mere suspicion that a suspect may be found within are thus not presented in this kind of situation. Nor does the entry into Santana's vestibule implicate concerns about "engineered" arrests deliberately undertaken when the suspect is at home in order to validate a warrantless search of an entire residence. Santana's home was not fully searched, and the officers' entry was solely the product of Santana's own actions; moreover, the evidence sought to be used against her was found on her person or at her feet, and its seizure would equally have been accomplished had she not sought to evade arrest by entering her house. Finally, the officers did not break into an area sought to be closed against them, but entered through a doorway that respondent Santana had left open. Considering all of these factors, and balancing respondents' minimal legitimate interests in personal privacy under the circumstances against the overwhelming probable cause for Santana's arrest and the requisites of effective law enforcement, this Court should hold that the officers were entitled to arrest Santana in her vestibule.[9]

---

[7] Compare *United States* v. *Lindsay*, 506 F.2d 166, 173 (C.A.D.C.): "Speed and a continuous knowledge of the alleged perpetrator's whereabouts * * * underpin this exception to the warrant requirement," with *United States* v. *Holland*, 511 F.2d 38 (C.A. 6) (continuous search but not continuous knowledge of the perpetrator's whereabouts is sufficient to justify a "hot pursuit" entry), and *United States* v. *Scott*, C.A. 9, No. 74-1373, decided February 21, 1975 (knowledge of the perpetrator's whereabouts and reasonably prompt but not continuous search is sufficient to justify a "hot pursuit" entry).

[8] As this Court has pointed out in analogous contexts, the test is not whether it would have been reasonable to get a warrant, but whether the official action was reasonable. *Cooper* v. *California*, 386 U.S. 58, 62; *United States* v. *Edwards*, 415 U.S. 800, 807.

[9] Those courts of appeals that have considered the constitutionality of warrantless arrests in private places in light of

CONCLUSION

Because the court of appeals wrote no opinion, we have no record of its view on the justifications for respondent Santana's arrest that we have outlined above. Ordinarily, this Court would not undertake plenary review without the benefit of the views of the court of appeals. However, because this case is in many ways a logical counterpart to *Watson*, in which certiorari already has been granted, and because it would be advantageous to law enforcement officers for this Court to narrow the scope of uncertainty in the law of arrest that has been created by *Coolidge*, we submit that the Court may wish to consider granting certiorari and setting this case for argument in tandem with *Watson*. If it does not do so, it should hold this case pending disposition of

---

Coolidge have used a balancing formula to ascertain the reasonableness of the arrest in light of the attendant circumstances. For example, the District of Columbia Circuit (*Dorman* v. *United States*, 435 F.2d 385 (*en banc*)) considers a number of factors, including the nature of the offense, the presence of fresh pursuit, the time of day, the requirement of a forcible entry, whether there is a clear showing of probable cause, the degree of certainty with which the officers know that the suspect is on the premises, and whether there is reason to believe the suspect is armed. Other courts have used similar groupings of factors. See, *e.g.*, *United States* v. *Bazinet*, 462 F.2d 982 (C.A. 8), certiorari denied *sub nom. Knox* v. *United States*, 409 U.S. 1010; *United States* v. *Morris*, 477 F.2d 657 (C.A. 5), certiorari denied, 414 U.S. 852.

Watson and remand to the court of appeals for further proceedings consistent with that disposition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN C. KEENEY,
Acting Assistant Attorney General.

FRANK H. EASTERBROOK,
Assistant to the Solicitor General.

JEROME M. FEIT,
TERENCE M. BROWN,
Attorneys.

JULY 1975.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 74-502

UNITED STATES OF AMERICA

vs.

PATRICIA McCAFFERTY
DOMINGA SANTANA
WILLIAM ALEJANDRO

Philadelphia, Pa., November 13, 1974

Before HON. LOUIS C. BECHTLE, J.

GRANTING OF
MOTIONS TO SUPPRESS

PRESENT:

THOMAS J. McBRIDE, ESQ.,
Assistant United States Attorney
for the Government

DENNIS EISMAN, ESQ.,
for Dominga Santana

MARK A. LUBLIN, ESQ.,
for William Alejandro

LEWIS H. DUNBAR
Official Court Reporter
3051 U.S. Court House
Philadelphia, Pa. 19107
WAlnut 5-9480

[2] THE COURT: All right. The court believes that the key to this case—well, first of all, the court understands that the offenses for which the defendants, Alejandro and Santana, are indicted have to do with their possession of the narcotics found after entry into the house; is that correct?

MR. EISMAN: That is right.

THE COURT: And not the offense having to do with the sale by McCafferty to Police Officer Gilletti. That's the court's understanding from a reading of the indictment and the quantities and also from the testimony.

The key to the case in the court's view is the basis upon which a warrantless entry into a person's residence can be made for either an arrest or a search. If these events had taken place on a street corner or in or about a moving automobile, it might be a different case.

The court's understanding is that the premises 2311 North Fifth Street were the residence of defendant, Santana, and not a third party residence

or a residence from which she could have been expected to leave.

When she was seen by the officers, presumably she didn't know that she was being watched, but when she saw them, she was in the doorway of the residence.

The evidence disclosed that the house was a typical two-story Philadelphia row house containing one front door and one back door and that there were nine police officers [3] at least available including Officer Gilletti who was on his way back to the police station or some place with Defendant McCafferty and possibly another police officer.

The court believes that the offense is a grave offense and not a complacent offense in keeping with the definition in some of the cases as to the kind of an offense that could warrant under other circumstances a warrantless search or entry.

There was strong probable cause that Defendant Santana had participated in the transaction with Defendant McCafferty. One of the police officers indicated or testified that the mission was to arrest Defendant Santana. Another police officer testified that the mission was to recover the bait money. Either one would require a warrant, one a warrant of arrest under ordinary circumstances and one a search warrant.

There was strong evidence that the defendant was on the premises. She was seen there and it was known that this was her premises that she either owned or occupied.

The execution of these events took place in the day time under the law, that is, up to 10 p.m. at night, as specified in the Federal Rules of Criminal Procedure. There is no evidence that either defendant was armed which is an important consideration in considering whether or not a warrantless arrest or search can be undertaken. There was no evidence that there was a need to prevent the escape of either [4] defendant. In one instance it was a defendant's home or where she lived, in any event, at Santana's home, and there were presumably enough police officers when they made their first move. One or two could have been dispatched to the rear to watch any possible rear exit. There was no evidence that either defendant made an effort to flee.

The court believes that the move by Defendant Santana into the house was a natural response of a person standing in a doorway under the circumstances that faced her when the police officers ran up the steps as opposed to an effort to escape.

The money was found in the Defendant Santana's pocket as opposed to any other surreptitious location within the house under a floorboard or behind a picture or dispersed through other persons. The presence of the money in Defendant Santana's pocket indicates that there was no basis to conclude that it was to be destroyed.

The court does not believe that the reentry from the doorway into the house by Defendant Santana can be considered under the cases to be "in hot pursuit." "Hot pursuit" is considered by the court

to mean a usual kind of a chase in and about public streets or places or even in and about a building. If the chase had taken place on the streets and had ended up into the house, it could be part of the final portion of an episode of hot pursuit.

[5] Under all the circumstances the court believes that the restricted requirements having to do with warrantless entrance into residences apply and if this event had taken place in other than a residence it may very well have supported a warrantless entry for either search or arrest, but under the circumstances the court believes that a warrant could have been obtained for either a search or an arrest.

The court believes it is a very close case and the court understands also that under the extreme emergency posture of a case like this where many unknown events are occurring, police officers oftentimes have difficult decisions to make and it is much easier for a court on reflection to analyze and pick apart or even indeed criticize, which this court is not doing, the action of police in this case.

Nevertheless, the court believes that under the circumstances the heroin which supports Counts II and III should be suppressed and not offered as evidence in the prosecution against Defendants Alejandro and Santana.

The question of the marked money is not as important because I don't know how that would be relevant in the case. But nevertheless that should be suppressed also as evidence.

Do counsel wish to speak to the court on any matter about the court's ruling?

MR. EISMAN: No.

[6] MR. LUBLIN: No.

THE COURT: All right. The evidence will be suppressed.

Will this case proceed to trial?

MR. McBRIDE: No, sir.

THE COURT: You can advise the court if it will and we can proceed to that.

All right. That's all.

(Concluded at 11:45 a.m.)

Certify that the foregoing is a correct transcript from the record of proceedings in the above entitled matter.

Date—11-15-74

/s/ Lewis H. Dunbar
Official Court Reporter

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 74-2275

UNITED STATES OF AMERICA, APPELLANT

v.

PATRICIA McCAFFERTY, DOMINGA SANTANA and WILLIAM ALEJANDRO

Appeal from the United States District Court for the Eastern District of Pennsylvania (Criminal No. 74-502)

Argued March 21, 1975

Before: ALDISERT, GIBBONS and GARTH, *Circuit Judges*

JUDGMENT ORDER

After considering the contention raised by appellant, to-wit, that exigent circumstances existed which justified appellee's warrantless arrest; it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Attest:

/s/ Thomas F. Quinn
THOMAS F. QUINN Clerk

BY THE COURT,

/s/ Aldisert
Circuit Judge

DATED: Mar. 21, 1975

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 74-2275

UNITED STATES OF AMERICA, APPELLANT

v.

PATRICIA MCCAFFERTY, DOMINGA SANTANA AND WILLIAM ALEJANDRO

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, and VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS and GARTH, *Circuit Judges*.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ Aldisert
Judge

Dated: May 8, 1975

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 579758 182